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| <p>CITY OF SAN JOSÉ, CALIFORNIA<br/>         Department of Planning, Building and Code Enforcement<br/>         801 North First Street, Room 400<br/>         San José, California 95110-1795</p> <h2 style="margin: 20px 0;">STAFF REPORT</h2> | Hearing Date/Agenda Number<br>July 24, 2002    Item: 3.b |  |
|   | File Number<br>CP02-005                                  |  |
|   | Application Type<br>Conditional Use Permit               |  |
|   | Council District<br>4                                    |  |
|   | Planning Area<br>North San Jose                          |  |
|   | Assessor's Parcel Number(s)<br>237-19-033                |  |

  

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| PROJECT DESCRIPTION   | Completed by: Elena Lee  |
| Location: West side of O'Toole Avenue, approximately 1000 feet southerly of Montague Expressway |  |
| Gross Acreage: 9.06   | Net Acreage: 9.06      Net Density: n/a  |
| Existing Zoning: HI Heavy Industrial  | Existing Use: Industrial (fuel processing center)  |
| Proposed Zoning: No Change  | Proposed Use: Installation of 56,600-barrel diesel storage tank, conversion of one existing 26,000-barrel diesel tank to ethanol storage and installation of associated equipment. |

  

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| GENERAL PLAN  | Completed by: EL  |
| Land Use/Transportation Diagram Designation<br>IP Industrial Park | Project Conformance:<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br><input checked="" type="checkbox"/> See Analysis and Recommendations |

  

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| SURROUNDING LAND USES AND ZONING                 | Completed by: EL                        |
| North: Manufacturing                             | LI Light Industrial/HI Heavy Industrial |
| East: Research and Development Offices/Warehouse | LI Light Industrial/HI Heavy Industrial |
| South: Manufacturing                             | LI Light Industrial                     |
| West: Coyote Creek/Manufacturing                 | HI Heavy Industrial/IP Industrial Park  |

  

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| ENVIRONMENTAL STATUS   | Completed by: EL  |
| <input type="checkbox"/> Environmental Impact Report found complete<br><input checked="" type="checkbox"/> Negative Declaration circulated on July 3, 2002 | <input type="checkbox"/> Exempt<br><input type="checkbox"/> Environmental Review Incomplete |

  

|                                    |                  |
|------------------------------------|------------------|
| FILE HISTORY                       | Completed by: EL |
| Annexation Title: Orchard No. 20-B | Date: 8/21/58    |

  

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| PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION  |             |  |
| <input type="checkbox"/> Approval<br><input checked="" type="checkbox"/> Approval with Conditions | Date: _____ | Approved by: _____<br><input type="checkbox"/> Action<br><input type="checkbox"/> Recommendation |

  

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|---|---|---|
| DEVELOPER   | OWNER/APPLICANT   | CONSULTANT  |
| Shell Pipeline Company LP<br>Attn: Amiel T. Joven<br>777 Walker Street<br>Houston, TX 77002 | Equilon Enterprises<br>Attn: John Gorman<br>2165 O'Toole Avenue<br>San Jose, CA 95131 | Environmental Audit, Inc.<br>Attn: Debra Bright Stevens<br>1000-A Ortega Way<br>Placentia, CA 92870 |

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: EL

**Department of Public Works**

See attached Memoranda for Project Comments

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**Other Departments and Agencies**

See attached Memoranda from Fire Department

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**GENERAL CORRESPONDENCE**

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See attached correspondence from the applicant

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**ANALYSIS AND RECOMMENDATIONS**

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**PROJECT DESCRIPTION**

The applicant, Equilon Enterprises LLC, is proposing the installation of a 56,600-barrel storage tank for diesel service, conversion of one existing 26,000-barrel diesel barrel tank to ethanol storage, and construction of an ethanol off-loading facility. The proposed 56,600-barrel tank is 85 feet in diameter and 56 feet in height. The ethanol off-loading facility includes an off-loading lane, lift station, pumps, air eliminator, meter, associated valves and underground piping. The proposed additions are being placed in the interior of the site, away from the required property line setbacks, and will not be visible from the public street. According to the 1999 San Jose Fire Code, Section 8001.3, the proposed use is considered a hazardous materials storage facility. Under the City of San Jose Zoning Ordinance Title 20, hazardous materials storage may be allowed by the City as a conditional use in the HI Heavy Industrial Zoning District.

The rectangular-shaped site is currently developed with a fuel storage and processing facility. Coyote Creek is directly adjacent to the site along its southern border. A combination of light and heavy industrial uses are located to the north, east and west.

**BACKGROUND**

The proposed modifications to the existing fuel storage and processing facility are a response to Governor's Executive Order D-5-99. The Executive Order requires the phasing out the of the use of oxygenate methyl tertiary butyl ether (MTBE) in the manufacturing of gasoline by December 2002 because it was determined that MTBE posed a significant risk to the environment. The federal Clean Air Act (CAA) requires California to reduce carbon dioxide emissions from gasoline by adding an oxygenate, which will help gasoline maintain between 1.8 and 2.2 weight percent oxygen content. As part of the Executive Order, the California Air Resources Board (CARB RFG Phase 3) adopted new specifications that require fuel distribution facilities to replace MTBE with ethanol, which is now the only approved oxygenate. This Conditional Use Permit would allow the applicant to install the necessary equipment to bring this facility into compliance with Executive Order D-5-99.

Under the current manufacturing process the oxygenate MTBE is blended with the fuel at the refinery before delivery to the site. Fuel is then distributed from the site to local gas stations. Because ethanol tends to absorb moisture, it is preferable to blend ethanol immediately before delivery to gas stations. Therefore, it is preferable that ethanol oxygenate be stored on site. In order to accommodate ethanol storage and to maintain the same level of gasoline production, the applicant is requesting approval to install a new 56,600-barrel diesel tank and to be allowed to convert an existing diesel tank to store ethanol. The project will not result in a greater number of employees or increased production of gasoline on site. The site is permitted by the Bay Area Air Quality Management District to produce a maximum of 1,859,000 gallons per day (or 44,262 barrels) of gasoline and applicant is not proposing an increase.

## **PUBLIC OUTREACH**

Notices for the Mitigated Negative Declaration and the public hearing for the Conditional Use Permit were distributed to the owners and tenants of all properties located within 500 feet of the project site.

## **ENVIRONMENTAL REVIEW**

An Initial Study was prepared for this project and the Director of Planning circulated a Draft Mitigated Negative Declaration on July 3, 2002. The key issues addressed in the Negative Declaration were air quality, biotic and cultural resources. Mitigation includes construction best management practices, archaeological monitoring and landscaping. The Negative Declaration concluded that the project will not result in a significant impact on the environment. Staff has been available to discuss the Negative Declaration with the public and the permit application file has also been available for public review.

## **GENERAL PLAN CONFORMANCE**

The proposed rezoning is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park. The designation of Industrial Park is intended for a wide variety of uses including research and development, manufacturing, assembly, testing and offices. Industrial uses that involve hazardous materials are allowed as long as any of the components with a hazardous or nuisance nature can be mitigated. The site is currently zoned Heavy Industrial and is already fully developed with a heavy industrial use. Given the likely permanency of the development and the importance of this facility, the proposed is a reasonable expansion of an existing use.

## **ANALYSIS**

The key issue for this proposal is the project's consistency with the Riparian Corridor Policy. The Riparian Corridor Policy was adopted by the City Council to help protect riparian habitat and minimize impacts to riparian resources.

### Riparian Corridor Policy

The Riparian Corridor Policy defines a riparian corridor as “any defined stream channels including the area up to the bank full-flow line, as well as all riparian (streamside) vegetation in contiguous uplands.” Design guidelines were included in the policy to implement its goal of protecting the riparian corridor. The guidelines recommend that all projects located adjacent to riparian corridors maintain a minimum 100-foot setback from any development. However, recognizing the need to balance growth with protecting habitat, the policy includes some flexibility in its implementation. The policy identifies conditions that if present would qualify a project for an exception to the 100-foot setback.

Setback exceptions to the policy may be granted if the project involves “Utility or equipment installations, or replacement of existing ones, which involve no significant disturbance to the riparian corridor during construction and operation, and generate only incidental human activity.” If the above condition is present, a reduced setback may be granted if the following conditions are met:

1. There is no reasonable alternative, which avoids or reduces the encroachment into the setback area.
2. The reduced setback will not significantly reduce or adversely impact the riparian corridor.
3. Uses are not fundamentally incompatible with riparian corridor habitats.
4. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks, which could be negatively affected by the proposed development.
5. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.
6. A qualified biologist, stream hydrologist and/or other appropriate professional has confirmed in writing the above conditions as well as a program to achieve the Habitat Protection Objectives.

The new diesel tank will be located about 110 feet from the top of bank of the Coyote Creek flood control channel. The proposed tank is also being installed within the existing facility of a fully-developed site. The entire facility is surrounded by a protective berm that is located less than 100 feet from the riparian corridor. The protective berm is designed in part, to serve as additional containment.

The site was previously granted a Riparian Corridor setback exception in 1996 for Site Development Permit H95-083, which allowed the expansion of the facility to include an additional fuel tank. A biotics survey completed by LSA Associates at that time determined that the proposed above ground storage tank would not cause any significant disturbance because the site was already developed and no special status species were found near the site. The tank was placed in the interior of the site. As riparian corridor mitigation, the permit included moving the existing berm from 30 feet to top of bank to 50 feet to top of bank and planting valley oaks to provide a buffer between the terminal and the corridor.

The applicant has submitted an updated biotics survey, prepared by LSA Associates. The survey confirmed the absence of special status species of animal or vegetation near the site. The survey stated that no significant changes to the habitat would occur as a result of the maintenance of the project's reduced setback. The applicant will plant and maintain additional native habitat vegetation along the rear of the property adjacent to Coyote Creek. The applicant will plant and

maintain a 12-foot wide planting strip along the southwestern boundary of the facility. The plants, per the recommendation of the biotics consultant, will include California Buckeye tree, Coast Live Oak tree, Valley Oak tree, Howard McMinn Manzanita shrub, Tyon shrub and Dwarf Coffeeberry shrub.

## **CONCLUSION**

Based upon the above analysis, staff concludes that the project can be granted an exception to the 100-foot setback requirement in compliance with the Riparian Corridor Policy. The proposed modifications to the site are not of a size or intensity that will cause significant disturbance to the corridor and there is no evidence to suggest that the proposed expansion will impact any special status species. The proposed project is to allow for compliance of an existing gasoline distribution site with the Governor's order requiring a phase-out of MTBE, and does not result in an increase in production activity on the site. Staff feels that therefore, a major reconfiguration of this site would not be appropriate at this time. However, the project will include the installation of additional landscaping that will benefit the habitat area. Use of the setback exception provides San Jose the flexibility to balance the need to maintain industrial uses and to protect the habitat.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the Heavy Industrial Zoning District.
3. A Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
4. Industrial uses generally surround the subject site to the north, south, east and west.
5. The Coyote Creek is directly adjacent to the site at the southern boundary.
6. The project proposes the installation of a 56,600 barrel storage tank for diesel service, conversion of one 26,000 barrel tank to ethanol storage, and construction of an ethanol off-loading facilities on a parcel fully developed as a gasoline distribution site. The ethanol off-loading facility includes an off-loading lane, lift station, pumps, air eliminator, meter, associated valves and underground piping.
7. The proposed 56,600-barrel diesel storage tank is 85 feet in diameter and 56 feet in height and will be located within the existing on-site protective berm.

8. The proposed project will include additional landscaping. The plants, per the recommendation of the biotics consultant, will include California Buckeye tree, Coast Live Oak tree, Valley Oak tree, Howard McMinn Manzanita shrub, Tyon shrub and Dwarf Coffeeberry shrub.
9. The City Council Riparian Corridor Policy is applicable to this application. The policy includes a 100-foot riparian corridor setback standard and provisions for exceptions to the standard. The project qualifies for the exception because it involves an equipment installation to an already fully developed site, does not result in an increase in full production or intensification of the use, and will not cause a significant disturbance to the site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of the City Council Riparian Corridor Policy.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

8. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.
  - c. The benefits of permitting the demolition, removal or relocation of the subject building outweigh the impacts of the demolition, removal or relocation.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and a Certificate of Permit has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the acceptance form.
2. **Submittals Prior to Recordation/Release.** The following items must be submitted for review and approval for the Director of Planning prior to the recordation of a Certificate of Permit by the County Recorder and/or prior to the release of this Permit to Public Works or the Building Division. *If these items are not submitted within 60 days of the adoption of this Resolution, this Permit will automatically expire regardless of any other expiration dates contained within this Permit.*
  - a. A detailed landscaping and/or irrigation plan. The applicant shall submit a revised landscaping plan including the types of plants, location and size.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
4. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Equilon San Jose Terminal. Ethanol Implementation Project," dated June 7, 2002, last revised on June 11, 2002, on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement and Building prior to approval of the final inspection of the project.
7. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
8. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. No outdoor storage is allowed/permitted unless designated on approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
10. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.



11. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
12. **Colors and Materials.** All building colors and materials are to be specified on the approved plan set.
13. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
14. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-00571) to the satisfaction of the Director of Public Works:
  - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
  - b. *Soils Report.* A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City's Engineering Geologist.
  - c. *Storm Water Management Plan.* This project results in a land disturbance of more than five acres. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:
    - (1) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
    - (2) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

- d. *Inlet Filters.* The project developer shall install inlet filters in all new on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:
- Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
  - Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
  - Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
  - Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
  - Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
  - Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
  - Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- e. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
- f. *Storm:*
1. The release path must be paved.
  2. On-site ponding must be less than one foot.
  3. Finished floor elevations must be one foot higher than overland release elevation.
- g. *Grading and Drainage Plan.* A Grading and Drainage Plan, indicating existing and finished elevations, is to be submitted for review to the City Hydraulic Engineer.

h. *Street Improvements.*

- 1) Applicant shall, at no cost to the City, construct driveway(s), close unused driveway(s), repair broken sidewalk(s), repair broken curbs and gutters, and/or repair street pavement.
- 2) Repair, overlay or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

i. *Electroliers.* Applicant shall, at no cost to the City, replace approximately three (3) existing High-Pressure Sodium type luminaires with Low-Pressure Sodium type luminaires.

j. *Utility Undergrounding Fee.* The developer shall pay a fee of **100** percent of the amount identified in the City's adopted Fee Ordinance for the street frontage for that portion of the site adjacent to O'Toole to be used in accordance with Section 15.26 of the San José Municipal Code, Utility Undergrounding Fees. The fee shall be paid to the city prior to issuance of a Public Works Clearance.

15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* The permit file number, CP02-005, shall be printed on all construction plans submitted to the Building Division.
- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- c. *American Disabilities Act.* The applicant shall provide appropriate access as required by the American Disabilities Act (ADA).
- d. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- e. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.

- f. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
- g. **Fire Flow.** Required fire flow for the site shall be specified in writing from the Fire Department.
- h. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
- i. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided as required by the Fire Department.
- j. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
- k. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- l. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

## CONDITIONS SUBSEQUENT

- 1. **Permit Expiration.** This Conditional Use Permit shall automatically expire in two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
- 2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

c: Building Division (2)  
Engineering Services  
Equilon Enterprises. Attn: John Gorman. 2165 O'Toole Avenue. San Jose, CA 95131  
Environmental Audit, Inc. Attn: Debra Bright Stevens. 1000-A Ortega Way. Placentia, CA 92870  
Shell Pipeline Company LP. Attn: Amiel T. Joven. 777 Walker Street. Houston, TX 77002

207-10/EL:yt